

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JOSE MORAN, <i>et al.</i> ,	§	
Plaintiffs,	§	
	§	
v.	§	CIVIL ACTION NO. H-06-0813
	§	
CEILING FANS DIRECT, INC.,	§	
Defendant.	§	

MEMORANDUM AND ORDER

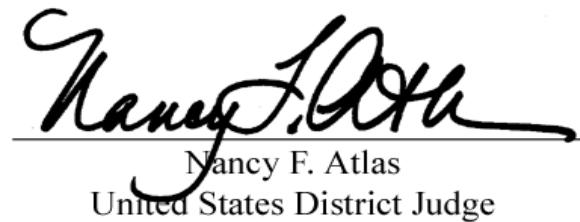
This case is before the Court on the Motion for Leave to File Second Amended Complaint [Doc. # 41] in which Plaintiffs seek to name Johnathon E. Davis and Eddie Blanchard as new Plaintiffs. Defendant filed its Response [Doc. # 47], arguing that Davis and Blanchard should be required to file a written consent to opt-in, and Plaintiffs filed a Reply [Doc. # 48]. Now that the issues involving the Notice to Potential Class Members have been resolved, the Court agrees that new members of the Plaintiff-class should be required to follow the written opt-in procedure.

Plaintiffs Jose Moran and Kelly Simmons filed this lawsuit under the Fair Labor Standards Act (“FLSA”) as a collective action on behalf of themselves and all others similarly situated. Little more than a month later Plaintiffs requested leave to amend to add David Gollinger as a named plaintiff. Because the case was in the very early stages and because the Notice to Proposed Class Members had not been drafted, the

Court permitted the amendment. At this point, however, the Court has ruled on all disputed issues relating to the Notice to Potential Class Members. *See* Memorandum and Order [Doc. # 39], pp. 3-4. In accordance with the Court's ruling, the parties' prepared a Joint Notice to Potential Class Members [Doc. # 44], which should already have been sent out or will be sent in the very near future.¹ Consequently, the proper mechanism for persons such as Davis and Blanchard who believe they are similarly situated to Plaintiffs in this case is to file a written notice of consent pursuant to 29 U.S.C. § 256. Therefore, it is hereby

ORDERED that Plaintiffs' Motion for Leave to File Second Amended Complaint [Doc. # 41] is **DENIED**.

SIGNED at Houston, Texas, this 7th day of **November, 2006**.



Nancy F. Atlas
Nancy F. Atlas
United States District Judge

¹ The parties filed a copy of the Joint Notice to Potential Class Members [Doc. # 44], which incorporated the Court's rulings on Defendant's objections to Plaintiffs' prior proposed notice. To the extent the parties are awaiting Court approval of the Joint Notice, that approval is hereby **GRANTED**.